IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 8115 of 2007(N)

PETITIONER:

K.MOHANAN, UPPER DIVISION CLERK,
DIRECTORATE OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTION, JAGATHI, THIRUVANANTHAPURAM.**

3. **DEPUTY DIRECTOR OF EDUCATION, MALAPPURAM.**

4. **P.M.ABDUL JALEEL, UDC, OFFICE OF THE ASSISTANT EDUCATIONAL OFFICER, NILAMBUR, MALAPPURAM DISTRICT.**

5. **INDIRAKUMARI.M., JUNIOR SUPERINTENDENT, OFFICE OF THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS, PAREEKSHA BHAVAN, POOJAPPURA, THIRUVANANTHAPURAM.**

R1 TO 3 BY GOVT. PLEADER SHRI.P.NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

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WP(C).No.8115 OF 2007-N.

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Dated this the 14th day of March, 2007.

J U D G M E N T

The petitioner joined the General Education Department as Lower Division Clerk pursuant to selection by the Public Service Commission. While working there, he made a request to transfer him and post him in another department, namely, the Department of Industries and Commerce. It is admitted position that the petitioner joined duty in that department after he was relieved from the General Education Department on 2-5-1985. It is the case of the petitioner that after joining duty he could understand that he was working in that department against a temporary post. I may hasten to say in this context itself that the above apprehension of the petitioner has no factual basis. The fact remains that the Industries Department did not retrench the petitioner for want of vacancies though the petitioner's plea is that he had entertained the apprehension that he would

have to work without a post in that department, and therefore, had sought for transfer back to his parent department. The transfer of the petitioner to the Industries department was ordered after getting the willingness of the petitioner that he will abide by the terms and conditions in G.O.(Ms).No.4/61/PD dated 2-1-1961. After sometime, he came back to the parent department and rejoined duty. He wanted to restore his lost rights contending that notwithstanding the willingness obtained in terms of G.O.(Ms).No.4/61/PD dated 2-1-1961, he is entitled to claim all service benefits, as though he was neither transferred from the parent department to another department on his request.

2. The above claim made by the petitioner was turned down as per Ext.P3 proceedings dated 4-8-1986 passed by the Deputy Director of Education, Malappuram. It is stated that the transfer of the petitioner from the General Education Department to the Industries and Commerce Department was subject to the provisions contained in G.O.(Ms).No.4/61/PD dated 2-1-1961. The petitioner filed a representation before the Director

of Public Instructions contending that the stand taken by the Deputy Director of Education was not in accordance with law. He had filed representation before the Government of Kerala as well.

3. Subsequently he approached this Court. As directed by this Court in Ext.P7 judgment dated 26-7-2005, his claim for restoration of seniority from the original date of his appointment was considered by the Government. After examining the matter in detail, the Government have found that the petitioner who had expressed his willingness and obtained a transfer order in terms of G.O.(Ms).No.4/61/PD dated 2-1-1961 cannot be heard to say that he shall not be governed by the conditions stipulated therein and that there was no circumstance which would justify any exemption being granted to the petitioner.

4. Counsel for the petitioner submits that the petitioner is entitled to claim the benefit of the law laid down in *Ali v. State of Kerala* (2003(2) KLT 922). It is also contended that based on the said decision, the Government have issued Ext.P11 Circular and that

the benefit of that Circular has been extended to other persons, similarly situated.

5. I have heard the learned counsel for the petitioner at some length.

6. I am unable to accept the contentions raised on behalf of the petitioner. Ali v. State of Kerala (cited supra) will not apply to the facts of this case. The orders pointed out by the petitioner as having been granted to others will not advance his case. Ali v. State of Kerala (cited supra) was rendered based on the language of Rule 8 of K.S. & S.S.R. and other provisions in K.S.Rs. According to me, Rule 8 of K.S. & S.S.R. will not apply to the case of the petitioner. Admittedly, the petitioner was transferred to the Department of Industries and Commerce not because the department wanted such a transfer. It was done on the basis of the request made by the petitioner. Therefore, the transfer was on his own volition. Hence, he cannot take advantage of Rule 8 of K.S. & S.S.R. Therefore, the petitioner is liable to forfeit his seniority. The apprehension said to have been

entertained by the petitioner that he was likely to be retrenched from service and that there was likelihood of a reduction in the number of posts in the Industries Department will not exempt him from the purview of GO (Ms.) No.4/61/PD dated 2-1-1961. In considering the question of exemption what is relevant to be noticed is the fact situation. Mere apprehension cannot be the basis for contending that the conditions referred to in G.O.(Ms).No.4/61/PD dated 2-1-1961, which would enable the government servant to come back to the parent department, without loss of seniority, had existed. The seniority of a Government officer is determined as per Rule 27(a) of K.S. & S.S.R. The petitioner went to another department on his own request. He has come back to the parent department, and that too on his own request. Hence, he can count his seniority from the date of rejoining duty in the parent department vide the proviso to Rule 27(a) of K.S. & S.S.R.

7. For other reasons also, the prayer made by the petitioner is liable to be rejected. His claim is for seniority from the date of his original appointment in

the parent department. At this distance of time, if alterations are made in the inter-se seniority position, that will affect several persons. They will feel aggrieved by such alterations. Hence issuing notice to one among those several persons, as though the party respondent impleaded in this writ petition represents all the other affected parties, and compelling the Government to do the exercise of recasting the seniority lists will result in injustice.

8. In any view of the matter, this Writ petition is liable to be dismissed. I do so.

K.K.DENESAN, JUDGE.

kvs/-